

Federal Communications Commission

DA 01-133

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
(Arthur, North Dakota)

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MM Docket No. 01-12/
RM-10039

NOTICE OF PROPOSED RULE MAKING

Adopted: January 10, 2001

Released: January 19, 2001

Comment Date: March 12, 2001

Reply Comment Date: March 27, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the petition for rule making filed by Vision Media Incorporated ("petitioner"), licensee of Station KVMF(FM), Channel 244A, Arthur, North Dakota, proposing the substitution of Channel 280A for Channel 244A at Arthur, North Dakota, and the modification of Station KVMF(FM)'s license accordingly. Petitioner states its intention to apply for the channel, if allotted.

2. In support of its proposal, petitioner states that Station KVMF(FM) is short-spaced by 1.37 kilometers to co-channel Station KQZZ(FM), Devils Lake, North Dakota, which operates on Channel 244C2. Petitioner further states that Station KQZZ(FM), as well as others, consistently cause interference within Station WVMF's normally protected 60 dBu contour. This interference, petitioner asserts, is apparently caused by a terrain anomaly beyond the normal 3-to-16 kilometer range employed by the Commission in calculating contour distances. The interference is in an area of 297.2 square kilometers with a population of 552 persons and represents 12% of the area and 8.3% of the population within Station KVMF(FM)'s normally protected 60 dBu contour.

3. We believe the proposal warrants consideration since the substitution of Channel 280A for Channel 244A at Arthur, North Dakota, would eliminate interference with other stations and the existing short-spacing to Station KQZZ(FM). An engineering analysis has determined that Channel 280A can be allotted to Arthur in compliance with the Commission's minimum distance with a site

restriction of 6.35 kilometers (3.94 miles) west at petitioner's presently authorized site.¹ Since Arthur is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested. We will not accept competing expressions of interest for the use of Channel 280A at Arthur, North Dakota, because the Commission's Rules do not contemplate the filing of expressions of interest in proceedings, such as this one, which seek to make equivalent channel substitutions.²

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Arthur, North Dakota	244A	280A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 12, 2001, and reply comments on or before March 27, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, his counsel or consultant, as follows:

Harry C. Martin, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209-3801
(Counsel for Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility

¹The coordinates for Channel 280A at Arthur are 47-05-42 North Latitude and 97-18-01 West Longitude.

²The Commission considers channels of the same class to be equivalent unless showings have been made that a station cannot be constructed for reasons such as environmental consequences or air hazards. See Vero Beach, Florida, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC 2184 (1989), and Tawas City, Michigan, 9 FCC Rcd 4794 (1994), recon. denied, 10 FCC Rcd 6108 (1995).

Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.